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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,838	10/08/2003	Jianhui Hong	31715-00058	7126

24919 7590 02/24/2004

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/681,838

Applicant(s)

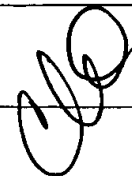
HONG ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/8/2003
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings filed with the application on 10/8/03 are accepted by the examiner.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 8, 10-14, 17, and 25 rejected under 35 U.S.C. 102(b) as being anticipated by *Schwartz et al.* (US # 5,813,849) (cited in IDS filed 10/8/2003).

*Schwartz et al.* discloses in Figures 1-12 a flare pilot (26) for igniting flammable fluids from a flare stack (10) and method of igniting these fluids as described in applicant's claims 1, 8, 10-14, 17, and 25 including a fuel-air mixture inlet pipe (28), a fuel-air mixture discharge nozzle (42) connected to the fuel-air mixture inlet pipe, wherein a cylindrical wind shield (40) is provided that is attached to the nozzle, and a plurality of openings in each of the opposite sides of the wind shield (see col. 4, lines 32-41). *Schwartz et al.* further includes a flame front ignition means (36), a flame detector (38), and a sound detector connected to the pipe at a remote location for detecting sound (see col. 5, lines 21-54).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2, 3, 22, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Schwartz et al.* (US # 5,813,849) in view of *Sneed* (US # 4,128,393) (cited in IDS filed 10/8/2003).

*Schwartz et al.* discloses all the limitations of claims except that the wind shield has an upstanding wall portion with downwardly oriented openings for discharging rain and wind.

*Sneed* teaches a wind-shielding device (5) for a burner nozzle (3) wherein the wind shielding device is arranged as an upstanding wall having a plurality of downwardly facing openings (6) (see Fig. 2).

Therefore, in regard to claims 2, 3, 22, 23, and 24 it would have been obvious to modify the wind shield of *Schwartz et al.* to incorporate the upstanding wall and openings of *Sneed* as this arrangement allows for protection of the flame formed at the nozzle from wind gusts, and allowing enough air to the nozzle to provide for proper combustion (see *Sneed*, col. 2, lines 40-53) with openings arranged such that the flow of air is diffused away from direct impingement on the flame (see *Sneed*, col. 2, lines 53-64).

7. Claims 9 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Schwartz et al.* as applied to claims 1 and 17 in view of *Altemark et al.* (US # 5,055,032) (cited in IDS filed 10/8/2003).

*Schwartz et al.* discloses all the limitations of claims 9 and 26 except possibly for a perforated flame stabilizer positioned within the wind-shield and surrounding the fuel-air nozzle.

*Altemark et al.* teaches a burner having a burner nozzle (20) that is surrounded by a perforated flame stabilizer/retention device (3) within an outer tube (23).

Therefore, in regard to claims 9 and 26, it would be obvious to a person of ordinary skill in the art at the time the invention was made to modify the flare pilot of *Schwartz et al.* to incorporate the flame stabilizer/retention device of *Altemark et al.* as this flame retention device is desirable in providing for very favorable combustion and keeps noise and pollutant emissions very low (see *Altemark et al.*, col. 5, lines 31-36).

### ***Double Patenting***

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 4-7, 15, 16, and 18-21 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 18-39 and 51-59 of copending Application No. 09/933,422. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
February 23, 2004

  
JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3749